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VIA ECF

Hon. Judge James Donato
United States District Judge

Re: *In Re Google Play Store Antitrust Litigation* (N.D. Cal. No. 21-md-02981-JD); *Match Group, LLC v. Google LLC* (N.D. Cal. No. 22-cv-02746-JD)

Your Honor:

Plaintiffs and Counterclaim-Defendants Match Group, LLC; Humor Rainbow, Inc.; PlentyofFish Media ULC; and People Media, Inc. (collectively, “Match Plaintiffs”) are aware that Plaintiff States and Consumers have requested a one-month extension of the case schedule, including the trial date. Match Plaintiffs agree that the current schedule is not feasible and must be changed. But the proposal by Plaintiff States and Consumers—who have had at least 10 months longer to conduct discovery than Match Plaintiffs—does not provide the parties enough time to complete fact discovery, expert discovery, or other pretrial proceedings for the Match Plaintiffs’ case. Match Plaintiffs filed their complaint less than three months ago and Google filed counterclaims against Match Plaintiffs less than a month ago. Indeed, Plaintiff States’ and Consumer’s request for additional time—even though they had more time to begin with—demonstrates why Match Plaintiffs need relief from the severely compressed schedule.

Accordingly, Match Plaintiffs respectfully request that *Match Group, LLC v. Google LLC*, 22-cv-02746-JD (the “Match Case”) be moved to a separate track, as laid out in Exhibit A. In the alternative, Match Plaintiffs request a three-month extension of the MDL case schedule, as laid out in Exhibit B.

I. Good Cause Exists for Modification of the Case Schedule

Although Match Plaintiffs have made every effort to comply with the current schedule, it has become clear that doing so is not possible and Match Plaintiffs will be severely prejudiced absent a modification. Match Plaintiffs filed their Complaint on May 9, 2022. On May 25, the Match Case was consolidated with the MDL, see Dkt. 245¹, and subjected to the pre-existing case schedule, including an August 8 cut-off for fact discovery and an August 15 deadline for opening expert reports, see Dkts. 191, 199 (setting MDL case schedule). As a result, the timeline for the Match Case was severely compressed from the outset, with approximately three months allotted for fact discovery and expert reports in a complex antitrust case. In addition, Google recently asserted five counterclaims against Match Plaintiffs on July 11 (for which there is a pending motion to dismiss).

¹ Unless otherwise noted, all references to the docket are to case number 21-md-02981-JD.

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The Match Plaintiffs have made extraordinary efforts to comply with the current schedule, including expediting and limiting discovery. To begin with, Google served the Match Plaintiffs with 175 requests for production, and Match Plaintiffs responded within 19 days (rather than the 30 days permitted by the Federal Rules of Civil Procedure). Then, Match Plaintiffs accelerated their production of documents. Match Plaintiffs ran approximately 1800 search terms and engaged dozens of attorneys to review the resulting hits. Match Plaintiffs substantially completed their production of custodial documents and data on July 20, less than two months after commencing discovery. Match Plaintiffs also responded to Google's interrogatories on July 1. Google has since served additional requests for production, interrogatories, and requests for admission, to which Match Plaintiffs intend to respond by August 8.

Meanwhile, Match Plaintiffs have worked diligently to review and analyze the discovery produced by the other parties and dozens of third parties. Match Plaintiffs have also actively participated in the ongoing deposition discovery—participating in more than a dozen depositions noticed by other parties to date. Match Plaintiffs and Google have also been negotiating limits on the number of depositions (rather than the allowances permitted by the Federal Rules of Civil Procedure) to complete depositions on an expedited basis.

Despite these efforts, a huge volume of discovery remains and cannot reasonably be completed by the current deadlines. As an initial matter, Match Plaintiffs have not had sufficient time to review the existing record, which is enormous. Google itself has produced over three million documents and separately produced data encompassing billions of Play Store transactions. Other Plaintiffs and third parties have also collectively produced millions of documents. In addition, approximately 30 depositions occurred before Match Plaintiffs filed their Complaint. Match Plaintiffs have so far only been able to review a small fraction of this existing record.

Merely obtaining and processing the existing record has resulted in many unexpected delays. It took Google nearly four weeks to produce to Match Plaintiffs the documents Google had *already* produced to the other Plaintiffs. Then, because of the size of the production—over 21 million pages—it took more than two weeks for Match Plaintiffs' vendors just to load those documents to a review platform.

In addition, depositions have not yet begun on issues specific to Match Plaintiffs' claims or Google's counterclaims. There are likely to be more than 15 depositions specific to the Match Case—virtually none of which have been scheduled. Google and Match Plaintiffs also have not yet served Rule 30(b)(6) topics. And the other parties have been scheduling additional depositions after the current fact discovery cutoff.

For these reasons, expert discovery also cannot be completed by the current deadlines. Match Plaintiffs' experts do not have sufficient time to even review existing discovery—let alone prepare expert reports on the complex antitrust matters at issue here. And because much of the fact discovery has yet to be completed, Match Plaintiffs' experts are still missing key evidence and other information. That Plaintiff States' and Consumers' experts require additional time when they have had far more time than Match Plaintiffs' experts affirms the reasonableness of Match Plaintiffs' request.

Finally, Google filed five counterclaims against Match Plaintiffs just recently on July 11—less than a month before the close of fact discovery and only 35 days before opening expert reports are due. Match Plaintiffs cannot adequately prepare their defense in such a short amount of time. Indeed, the pleadings will not even close for the Match Case until *after* the cutoffs for fact discovery and opening expert reports. Match Plaintiffs' Motion to Dismiss Google's counterclaims is set for hearing on September 8 (the earliest

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date Match Plaintiffs could notice). And if the Court grants Match Plaintiffs' motion but allows Google leave to amend, the pleadings may not close until even later when more pretrial deadlines have passed.

II. Match Plaintiffs' Proposals

Given the volume of discovery that remains despite Match Plaintiffs' diligent efforts, Match Plaintiffs propose that the Match Case be moved to a separate track from the rest of the MDL. A proposed case schedule for the Match Case as a separate track is detailed in the attached Exhibit A.

It is well-established that in an MDL, "the degree of consolidation or coordination is a matter soundly dedicated to the discretion of the transferee judge," and the judge may schedule cases on separate tracks. *In re Mirena IUD Prod. Liab. Litig.*, 938 F. Supp. 2d 1355, 1357 (U.S. Jud. Pan. Mult. Lit. 2013) ("It may be advisable to establish a separate track of proceedings if those actions are, as defendant contends, nearly ready for trial."); see also *IN RE: TFT-LCD (FLAT PANEL) ANTITRUST LITIGATION*, 07-md-01827, Dkt. at 2165 at 1, n. 1 (N.D. Cal. November 23, 2010) (establishing Track One schedule and noting that "[d]irect action and State AG cases filed after December 1, 2010, will be subject to a separate pretrial and trial schedule, or, if circumstances permit, will be folded into the schedule set forth in this order"). The use of separate case tracks is useful where "maintaining all cases on a single track actually would produce inefficiencies." *In re EpiPen (Epinephrine Injection, USP) Mktg., Sales Pracs. & Antitrust Litig.*, No. 17-MD-2785-DDC-TJJ, Dkt. 42 at 2 (D. Kan. Sept. 14, 2017).

Here, the Match Case is differently positioned both substantively and procedurally. Substantively, though it shares some common issues, Match Plaintiffs' Complaint differs from those by Epic Games, Inc. ("Epic"), Consumers, and States in several ways, including that Match Plaintiffs assert a different alternative market definition (the Dating App Distribution market) and that Match Plaintiffs assert tort claims against Google. Further, Google's recently asserted counterclaims against Match Plaintiffs raise a number of unique issues unrelated to the other Plaintiffs' cases. Procedurally, the Match Case was filed more than a year later than other cases in the MDL, forcing Match Plaintiffs to play catch-up.

Because the parties cannot complete discovery on Match Plaintiffs' claims (or Google's counterclaims) on the current case schedule, the most efficient solution is to separate the Match Case into its own case track. This avoids any delay to the rest of the MDL cases. To avoid duplicative discovery, Match Plaintiffs will continue to participate in overlapping discovery in the MDL, including already scheduled depositions.

Alternatively, Match Plaintiffs seek a three-month extension of all case deadlines in the MDL, including the trial date. For the reasons described above, good cause exists for such an extension. See *Green v. City & Cnty. of San Francisco*, 2018 WL 6181572, at *2 (N.D. Cal. Nov. 27, 2018) ("Good cause" exists when a deadline "cannot reasonably be met despite the diligence of the party seeking the extension."). A proposed case schedule reflecting a three-month extension is detailed in the attached Exhibit B.

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III. The Parties' Positions

Match Plaintiffs have met and conferred with all parties regarding Match Plaintiffs' proposals.

States and Consumers do not oppose, and Epic takes no position regarding, Match Plaintiffs' proposal to proceed on a separate track. Their positions regarding an extension of the case schedule in the MDL are set forth in the States' and Consumers' separate letter. See Dkt. 307.

Google opposes Match Plaintiffs' proposals and intends to file a response.

Match Plaintiffs will be prepared to address this issue at this Thursday's class certification hearing, if convenient for the Court, or in any other format or forum the Court may prefer, including via a noticed motion.

Dated: August 3, 2022

Respectfully submitted,

By: /s/ Joseph A. Reiter

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ULC; and People Media, Inc.

cc: Counsel of Record

EXHIBIT A**Option 1: Separate Track for *Match Group, LLC v. Google LLC*, 22-cv-02746-JD**

Event	Current Deadline in <i>In re Google Play Store Antitrust Litigation</i>, 21-md-02981-JD	New Deadline in <i>Match Group, LLC v. Google LLC</i>, 22-cv-02746-JD only
Fact discovery cut-off	August 8, 2022	March 24, 2023
Merits expert reports of party with the burden of proof	August 15, 2022	May 19, 2023
Responsive merits expert reports	September 19, 2022	June 23, 2023
Rebuttal expert reports	October 17, 2022	July 21, 2023
Merits expert discovery cut-off	November 7, 2022	August 18, 2023
Last day to file dispositive and <i>Daubert</i> motions	November 10, 2022	September 8, 2023
Dispositive and <i>Daubert</i> motion responses	December 8, 2022	October 6, 2023
Dispositive and <i>Daubert</i> motion replies	December 29, 2022	October 27, 2023
Joint submission for merits experts' concurrent expert proceeding	December 30, 2022	October 31, 2023
Concurrent expert proceeding for merits experts	January 5, 2023	November 2, 2023
Dispositive motion hearing	January 19, 2023	November 16, 2023
Final pretrial conference	March 16, 2023	January 19, 2024
Jury Trial	April 3, 2023	February 6, 2024

EXHIBIT B**Option 2: Three Month Extension in *In re Google Play Store Antitrust Litigation*, 21-md-02981-JD**

Event	Current Deadline	New Deadline
Fact discovery cut-off	August 8, 2022	November 7, 2022
Merits expert reports of party with the burden of proof	August 15, 2022	November 14, 2022
Responsive merits expert reports	September 19, 2022	December 19, 2022
Rebuttal expert reports	October 17, 2022	January 17, 2023
Merits expert discovery cut-off	November 7, 2022	February 6, 2023
Last day to file dispositive and <i>Daubert</i> motions	November 10, 2022	February 13, 2023
Dispositive and <i>Daubert</i> motion responses	December 8, 2022	March 10, 2023
Dispositive and <i>Daubert</i> motion replies	December 29, 2022	March 24, 2023
Joint submission for merits experts' concurrent expert proceeding	December 30, 2022	March 28, 2023
Concurrent expert proceeding for merits experts	January 5, 2023	April 6, 2023
Dispositive motion hearing	January 19, 2023	April 20, 2023
Final pretrial conference	March 16, 2023	June 15, 2023
Jury Trial	April 3, 2023	July 5, 2023